

NORTH CAROLINA

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

GASTON COUNTY

2023 MAR -8 A 11: 22

23 CVS 812

GASTON COUNTY, C.S.C.

<p>NORTH CAROLINA ASSOCIATION OF EDUCATORS, INC., ELISABETH HAYWOOD, and BOBBIE CAVNAR,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p>vs.</p> <p>GASTON COUNTY BOARD OF EDUCATION,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p style="text-align: center;">VERIFIED COMPLAINT AND REQUEST FOR INJUNCTION</p>
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NOW COMES the Plaintiffs, complaining of violations of the law by The Gaston County Board of Education ("Defendant" or the "Board") and alleges the following:

PARTIES

1. Plaintiff North Carolina Association of Educators, Inc. ("NCAE") is a membership organization organized and existing as a nonprofit corporation under the laws of the State of North Carolina. Its principal place of business is Raleigh, North Carolina. The mission of NCAE is to promote and advance the teaching profession and quality of public education in Gaston County and throughout the State of North Carolina. NCAE's members (referenced throughout this Complaint when the NCAE is referenced, along with the two named Plaintiffs) are employed as public-school teachers, school administrators, and education support personnel in Gaston County and across North

Carolina. Hundreds of NCAE's members are employees of the Gaston County Schools that have suffered and continue to suffer irreparable harm through the repeated, persistent, and ongoing failures of the government to timely pay employees their proper earned compensation. The NCAE has worked relentlessly and tirelessly since the onset of the Gaston County Schools payroll system debacle to do everything within its power to aid and assist members to obtain the timely and proper payroll compensation benefits from Defendant but now has no further choice but to pursue legal action to vindicate the rights of school personnel across Gaston County Schools.

2. Plaintiff Elisabeth Haywood (“Ms. Haywood”) is a 5th grade elementary school teacher at Costner Elementary School and a resident of Dallas, North Carolina. She is a product of Costner Elementary where she personally attended elementary school. She is a second-generation educator and lifelong advocate for the Gaston County Schools public education system who, like many other employees, has been improperly paid through most of 2022 with untimely compensation, overpayments, and improper or inexplicable payroll compensation.
3. Plaintiff Bobbie Cavnar (“Mr. Cavnar”) is a high school English teacher at South Point High School and resident of Belmont, North Carolina. He was named the Gaston County Schools Teacher of the Year in 2015, North Carolina Teacher of the Year in 2016, and 2018 NEA Foundation National Teacher of the Year. He is deeply involved with extracurricular efforts to improve the teaching profession across the State of North Carolina on top of his normal classroom duties for Gaston County Schools. Like so many other employees, however, he has been improperly paid with a different monthly

paycheck most every month in 2022 and untimely compensation, underpayments, and improper or inexplicable payroll compensation.

4. Mr. Cavnar, Ms. Haywood, and the NCAE strongly believe that they are engaging in the reporting of and opposition to unlawful conduct by filing this Complaint and speaking out publicly, through this Complaint, regarding extremely serious matters of public concern that affect the state of the public schools system in Gaston County, North Carolina.
5. Nearly every week, all types of employees come to Mr. Cavnar for help, guidance, and leadership regarding their dire payroll/financial situations, too afraid of reprisal/retaliation by Defendant to speak out publicly or against the Defendant.
6. Defendant Gaston County Board of Education is a corporate body established pursuant to Article 5 of Chapter 115C of the North Carolina General Statutes. The Gaston County Board of Education is often referred to locally as Gaston County Schools and by state officials as the Gaston County Administration Unit. The Board has the power to control and supervise matters pertaining to the public schools in Gaston County, North Carolina, by and through its Superintendent and Secretary of the Board, and has the power and authority to compensate all personnel of the school system.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action in that it is an action for injunctive relief and monetary damages in excess of \$25,000.00 exclusive of costs and interests. Plaintiffs seek damages and equitable relief for violations of their statutory and constitutional rights.

8. Venue is proper in this Court as the Defendant's principal place of business is in Gaston County, and Gaston County is the county in which the Board resides for purposes of liability under North Carolina law.

FACTUAL ALLEGATIONS

9. In 2016, the North Carolina General Assembly passed the School Business System Modernization Act (the "SBSM" law) which provided, amongst other things, large amounts of state funding to local school systems that voluntarily elected to adopt and implement new business systems technology, like payroll systems.
10. Under the SBSM law, local school systems first became eligible to receive grant funds for the 2021-2022 fiscal year. The law delegated near complete responsibility for oversight, governance, and control of funding to an administrative agency, the Department of Public Instruction, to provide funds to local school systems "in appropriate amounts, as determined by the Department."
11. While actual compensation for North Carolina classroom teachers grew on average at the lowest rate in the nation between 2018-2020, the big business of taxpayer money dolled out for educational executives and administrators, corporate educational consultants, and third-party educational vendors continued to be bolstered by large spending allotments such as the SBSM grants under the political guise of 'education funding.'
12. As part of this funding allotment, administrative agency officials at the Department of Public Instruction began the selection process to determine which corporate vendors would receive the lucrative taxpayer funded SBSM grants. DPI awarded

two vendors these lucrative contracts, and each county could choose one of the two DPI approved vendors to manage the switch to 'modernized' payroll systems.

13. Upon information and belief, Gaston County Schools signed an MOU that selected one third party corporate vendor, Cherry Road Technologies, Inc. to implement and support the third-party payroll provider of another corporate vendor, Oracle Cloud, in December of 2019.
14. In January of 2022, Gaston County Schools elected to 'go live' with the brand-new Oracle payroll system. Gaston County Schools is among the top ten largest school districts in North Carolina and is the second largest employer in the entire County, with nearly four thousand employees across 56 schools. Gaston is merely a *pilot district* for the SBSM payroll vendor rollout: statewide rollovers are scheduled and planned for the future with the same corporate vendors and massive taxpayer funded payouts to corporate vendors through counties like Charlotte-Mecklenburg Schools and Cumberland County Schools in 2023.
15. Upon information and belief, the massive changeover was not strictly required by law. Rather, the massive upheaval to the payroll system for thousands of Gaston Schools employees was a heavily incentivized elective change authorized under the North Carolina School Business Systems Modernization Act that went into effect in 2017.
16. While teachers are by their very nature patient, helpful, and understanding of unintentional complications, Plaintiffs believe the continuous, ongoing failures following months, and months, and months of notice – now ongoing for nearly a year and a half, with full knowledge the wrongful compensation would continue to

occur, converted the untimely and unlawful compensation to knowing, intentional actions, whereby officials intentionally administered payroll each month with full knowledge the very same errors would continue to occur because the very same reported errors were not yet repaired.

17. For example, beginning just weeks before the old payroll system was transitioned over to the new system, Gaston County School officials were fully aware of the breadth and extent of the results that would occur: test runs for the payroll system yielded “2237 errors” as revealed by emails obtained between Cherry Road Technologies, Gaston County School, and DPI officials:

From: Jose Peres <JPeres@cherryroad.com>
Sent: Wednesday, December 22, 2021 12:40 PM
To: Gwendolyn Tucker <Gwendolyn.Tucker@dpi.nc.gov>, Subhiksh Divakaran <SDivakaran@cherryroad.com>, Tammy Bailey <Tammy.Bailey@dpi.nc.gov>, Mary LaMountain <Mary.LaMountain@dpi.nc.gov>, Brooklyn Graham Kennedy <B.GrahamKennedy@cherryroad.com>, Ron Townsend <Ron.Townsend@dpi.nc.gov>, chail@gaston.k12.nc.us, Denise Jackson <Denise.Jackson@dpi.nc.gov>, Thomas Stevens <Thomas.Stevens@dpi.nc.gov>, Michael Ray <Michael.Ray@dpi.nc.gov>, Corey Terry <Corey.Terry@dpi.nc.gov>, Sam Cheruvu <Sam.Cheruvu@dpi.nc.gov>, jbeckford@gaston.k12.nc.us, Susan Brooks <sbrooks@gaston.k12.nc.us>, Gina Waters <gwaters@gaston.k12.nc.us>, awslutsky@gaston.k12.nc.us, gboskins@gaston.k12.nc.us, dloftis@gaston.k12.nc.us, Mark Samberg <Mark.Samberg@dpi.nc.gov>, Prakash Chauhan <PChauhan@cherryroad.com>, Rini Varghese <RVarghese@cherryroad.com>, Rajan Mankame <RMankame@cherryroad.com>, Shubha Janardhan <SJanardhan@cherryroad.com>, Hari Dangudubiyam <HDangudubiyam@cherryroad.com>
Subject: RE: Update - Gaston State Files for Go Live

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email to sm.attachment@dpi.nc.gov

Gwen, Tammy,

Is there a full payroll compliance report from this file that you can share. Should be on the 2237 compliance errors shown below for Gaston ..

October Payroll Compliance Errors:

Serenic Payroll File - 0

Cherry Road Payroll File - 2,237

Jose Peres | Sr. Director, Cloud Delivery
CherryRoad Technologies Inc.

18. Upon information and belief, various officials in fact warned Gaston County Schools not to go live with the new payroll system, stating in emails that “Gaston was advised by DPI not to go live” with the corporate vendor changes to the payroll system. North Carolina State Representative Kelly Hastings (R-Gaston) publicly stated that he has received hundred of messages about the payroll debacle in Gaston County Schools, stating that “Gaston County had chosen to go live with their new payroll program in January against the recommendations of both DPI and the vendor.”

19. Even after Gaston County Schools implemented the system in January of 2022, according to one senior DPI official, it was entirely “unacceptable...[DPI] shouldn't have to continue to compromise our systems and processing for them.”

20. Ms. Jennifer Bennett, the Director of School Business for the North Carolina Department of Public Instruction, plainly and clearly expressed the complete failures of the administration in implementation of the new payroll system in a March 8, 2022 email admonishing Gaston County Schools for attempting to overdraw government accounts by approximately twenty million dollars:

We are at our wits end...I'm actually starting to get extremely concerned about the validity of your general ledger...and if you can even close the books successfully, let alone get us clean data...you have serious issues with data missing in your general ledger. . . . I honestly don't know how to help you guys with this. . . . You may want to consider contracting with an accounting firm who doesn't do your audit to assist with this work My head is spinning when I put my finance officer hat on it's obvious the district is out of compliance with UERS General Statutes. We tried to provide some grace through January, but for February to be this far off?? I am very concerned that your books are compromised. . . . As the Finance Officer you are responsible for ensure[sic] the accurate transmission of data. If we would have processed this you'd be overdrawn with the State Treasurer's office by \$20 million. . . . This is more than just some benchmark edits throwing off reports somewhere we (DPI and Gaston) are missing \$20m of expenditures

21. In another email dated March 8, 2022, Barry Pace, Director of Modernization at the NC Department of Public Instruction, provided his advice and recommendations and offered state funds to “contract with a third party auditor to consult/perform reconciliation specific to this concern” although, upon information and belief, no such independent, third party reconciliation/audit services were ever provided to rectify each individual teachers' unlawful and untimely compensation amounts.

Plaintiff Elisabeth Haywood

22. Plaintiff Elisabeth Haywood has served Gaston County Schools for 18 years as an elementary school teacher. She is currently a 5th grade teacher at Costner Elementary School in Dallas, North Carolina. She earned career status approximately fourteen years ago in 2009, well before the North Carolina Legislature violated the North Carolina Constitution and attempted to unlawfully take away her earned Career Status rights protections as held in *N. Carolina Ass'n of Educators, Inc. v. State*, 368 N.C. 777, 792 (2016).
23. Ms. Haywood has spent her entire teaching career of nearly two decades in Gaston County Schools. She attended Costner Elementary School, and it was always her dream to grow up and teach at the very same elementary school she attended. She is also a second-generation Gaston County Schools teacher. Her father retired from Gaston County Schools.
24. Ms. Haywood is an unabashed advocate for public education in Gaston County. She attends most every school board meeting and is invested in Gaston County Schools. As a multi-generation Gaston County Schools educator, Ms. Haywood even volunteered recently to ride a 1955 school bus with county students in the Dallas Town Parade representing Gaston County Schools in the community. She lives and breathes Gaston County Schools and is one of the system's biggest advocates.
25. As an elementary school teacher paid ten months of salary, like many teachers Ms. Haywood elects for Gaston County Schools to deduct a fixed monthly amount each month to be deposited into her summer cash account with special restrictions and

limitations. Upon information and belief, these earned wages earn interest in this account and cannot be freely withdrawn or liquidated. These earned wages are then released back to her in two installments during the 11th and 12th months of the year (during the summer) when she would otherwise not draw a salary. Additional pre-tax earned wages are to be withheld and deposited to a medical escrow account to cover her health insurance contributions over these two summer months. This arrangement permits her to enjoy the fruits or benefits of her work with a steady, consistent pay stream every month of the year and earn interest on the retained 'summer cash' account deposits.

26. Ms. Haywood also permits her earned wages to be temporarily deducted from her paychecks by Gaston County Schools to be promptly deposited into her Teacher's and State Employees' Retirement System ("TSERS") retirement account, a pension plan administered by the North Carolina Retirement Plans within the Department of State Treasurer. This contribution is typically 6% of her property each month, along with legally mandated employer contributions, regularly remitted to TSERS on her behalf in order to safeguard the property and earn investment returns.
27. Like most every teacher in the county, this arrangement permits Ms. Haywood to defer paying taxes on these earned wages (due to their pre-tax deduction status from her paycheck) and enjoy the fruits and benefits of her work with a steady, safeguarded, and reliable handling of her property by the school system, promptly transmitted to TSERS to build her retirement nest egg. The peace of mind of these retirement benefits is a significant benefit earned by teachers like Ms. Haywood in North Carolina. Upon information and belief, these earned wages are deducted by

Gaston County Schools and temporarily held in accounts until promptly and timely remitted to TSERS. Teachers do not authorize the Board to withhold their monies for any longer than necessary to promptly transmit to TSERS.

28. For nearly two decades, Ms. Haywood's earned wages property has been processed and generally handled properly with all earned wages and benefits accounted for, deducted, and promptly remitted or handled by Gaston County Schools. Gaston County Schools is fully knowledgeable and aware of how to timely and properly account for, process, and remit employees' earned wages.
29. Notwithstanding this knowledge and ability, in August of 2022 Gaston County Schools processed nearly Seventeen Thousand Dollars (\$17,000.00) into Ms. Haywood's paycheck. Ms. Haywood could not believe the grossly inaccurate nature of this paycheck which she was forced to withhold and pay taxes upon.
30. Despite the completely wrongful pay amount – essentially an involuntary, forced loan, the error was also then reported as taxable wages and income on her annual IRS Form W2 prepared by the Board, despite the fact that she would undoubtedly be required to repay these wrongfully paid taxpayer monies back to the schools.
31. Upon information and belief, a proper payroll loan for this period would incur no adverse tax consequences to Ms. Haywood; the loan is to be repaid, does not constitute taxable income, and she would later repay the loan with taxed wages, thus avoiding double taxation on the same monies. Because it was not properly processed as a loan, however, Ms. Haywood was subjected to taxes on the payroll overpayment affecting her annual income taxes for the year and, upon information

and belief, will now be forced to pay taxes again on the future monies she earns to repay the huge error by the Board.

32. Annual tax forms are inaccurate for employees across the county, and employees are now placed in a tax nightmare attempting to figure out how to file their own taxes or if they can even file their own personal taxes.

33. Most troublingly, Ms. Haywood had no explanation or accounting as to this payment. While she suspected it constituted a gross overpayment, her compensation is also deducted over the course of the year to account for multiple months of summer compensation, so she was entirely uncertain and unsure as to whether this payment was an error that rightfully constituted her first few months' wages, inadvertently paid in advance such that she would now *not be paid* the next few months; whether her summer months' compensation was paid and somehow combined with the current month's earned wages; or whether it was some other portion of earned wages to account for another time period. One of the most significant *fruits* of her teaching labor – her steady, reliable compensation, had been taken by the government.

34. A litany of headaches and complications followed this untimely compensation. This significantly higher than normal monthly paycheck also yielded improper multiple deductions and payment amounts. For example, for this month alone, a nearly One Thousand (\$1,000) retirement contribution would have been deducted along with immediately retained payroll taxes, deductions, and withholdings retained from the wrongful and untimely compensation.

35. Ms. Haywood immediately contacted her administration who she believes contacted the payroll department. Although not her own fault, Ms. Haywood was then informed she needed to further explain the issue in an email directly to payroll. No accounting or explanation was ever given to Ms. Haywood, and she was later asked to input the information yet a third time into a Google form.
36. Ms. Haywood became suspicious and frustrated regarding the issue because Gaston County Schools administration appeared to repeatedly downplay the issue - deflecting it as a limited, isolated issue with a few people's property while she knew this was not the case; she personally believed at least 5-6 other people at her small elementary school alone faced similar payroll errors. Another employee, for example, explained to her how her Flexible Spending Account ("FSA") card was declined because of improper takings of compensation and failures of the school system to deposit the withheld monies into the FSA account used for medical expenses like prescriptions. The secretary at her school literally had to go to the central office in person where she was not permitted to enter the building; she physically refused to leave until she got her paycheck. The employee waited in the parking lot until the schools would process her correct paycheck and fix the untimely taking of her property.
37. NCAE members like Ms. Haywood have suffered extensive, repeated, and ongoing untimely and wrongful payroll compensation amounts across Gaston County Schools. Members have had wrongful amounts taken by the schools for programs or payments that were previously canceled, with no refund or repayment of the monies taken; deductions for programs or payments that are never remitted to third

party providers, like car payments, for example, deducted from paychecks yet never remitted to the loan provider; or payments for periods of work that are simply never paid to employees.

38. Dedicated, loyal, and professional veterans of the schools have literally been forced to physically go to the central office to demand their property in the form of earned wages taken by the government.

39. Without any accounting or explanation as to why Ms. Haywood has not been paid the proper salary amount in a timely manner, Ms. Haywood continued to come to work every day to serve her students. The next month, her monthly paycheck varied again, and it appeared her summer medical escrow amount was now not withdrawn from her paycheck. This would potentially impair her health insurance coverage for the summer months if not paid or impair her steady monthly payments during the summer months with additional, unanticipated and unknown future costs and deductions now due and owing. Most troubling, however, was the fact that she could not obtain any personalized accounting or explanation for the ongoing failures regarding her earned wages property.

40. Since Ms. Haywood's wrongful and untimely overpayment, nearly each paycheck has been different. Ms. Haywood now has extreme difficulty trying to determine her proper gross and net monthly compensation amounts each month with all of the continuous, ongoing debacles of payroll failures that add to or detract from the timely, proper compensation amounts. Amounts are being overpaid in her paycheck. Amounts and deductions are improperly not taken out when they should be taken, and instead paid in one paycheck or taken out of her current check to

account for other paycheck errors. It has become such an ongoing mess that she can barely determine which corrections are proper or improper to account for an ongoing litany of wrongful failures and takings of her property.

41. Without any accounting or explanation, Gaston County Schools suddenly began contacting employees that received payroll overpayments and began demanding immediate repayments by checks to the school system or repayments through some kind of future payment plan, without any actual written accounting for the repayment errors. According to Ms. Haywood, in one instance a school employee was contacted and asked how she would like to handle the repayment of a prior overpayment, and when the employee asked for the details of the amounts improperly taken, paid, or withheld or deducted, the Gaston County Schools employee simply stated that they could not answer those questions.

42. Ms. Haywood believes Gaston County Schools continues to downplay and minimize the gravity and breadth of the wrongful actions. At one school board meeting, she observed officials quietly stating that these payroll issues were just “distractions” from the other business of the school system. For example, employees’ earned wages property was taken by the school system and not deposited into retirement accounts yet not disclosed to employees themselves until employees actually uncovered the issues on their own. All of these amounts taken by the government and not promptly deposited into the TSERS systems exceed the authority granted by teachers.

43. Ms. Haywood believes that in any other industry employees would be walking off the job or the employer subjected to major governmental investigations, audits, or

penalties and fines. She thinks that teachers are simply good-natured people, there to help and serve the children, and that this good-natured demeanor has been taken for granted by the schools. Ms. Haywood believes there has been no real transparency or commitment to stop the wrongful takings of property and interference with compensation, particularly now that Gaston County Schools unequivocally knows about each individual's wrongful compensation yet keeps repeating the same wrongful takings of untimely paychecks.

44. A "customer service" team was created by Gaston County Schools to take complaints of wrongful takings of property and earned wages that was largely comprised of non-financial/non-payroll employees like coaches or athletic directors. Ms. Haywood believes these individuals have no business calling other employees to discuss and learn about their compensation details and no ability to even understand or process financial/payroll issues. When she asked how these random officials were placed in this role, one alluded they were 'voluntold' to participate on the 'customer service' team by administration despite their complete lack of expertise or desire to be put into this position.

45. Ms. Haywood is most frustrated because of the complete lack of accounting for her improperly taken property and lack of explanation or accountability. No one with the financial/payroll expertise to properly account for and fix the issues has ever offered to sit down with her and go through her paystubs, one by one, and conduct an accounting to determine what is proper, improper, and then of course stop intentionally processing payrolls known to be wrongful. She believes transparency and honesty could have easily solved each person's issues in the county; instead,

employees are made to feel like they are the problem that keeps complaining to administration.

46. While Ms. Haywood has been relatively able to deal with the financial uncertainty, she knows many other employees like classified hourly employees that often work other jobs - like drive buses, are living month to month and cannot deal with this type of wrongful conduct with regards to their compensation. School staff were told, for example, at the beginning of the school year that they may be required to go without paychecks for periods of time...but still be expected to report to work.
47. Personally, she views the reliability, stability, and peace of mind that comes with a stable monthly paycheck with benefits and retirement as the primary economic *fruit* of her labor in the classroom – whether it be for health insurance, retirement, summer months’ payments, or timely, monthly paychecks in the proper amount. This fruit has been taken by the government.

Plaintiff Bobbie Cavnar

48. Plaintiff Bobbie Cavnar has served Gaston County Schools for nearly twenty years beginning with the system back in 2003. He believes in Gaston County Schools, and he is heavily invested in the school system with his own children in feeder schools to the very high school where he teaches.

49. Mr. Cavnar was humbled by his nomination and selection by fellow teachers as the Gaston County Teacher of the Year in 2015 and later North Carolina Teacher of the Year in 2016. This prestigious, statewide recognition brings with it many unique benefits and opportunities to participate in the improvement of the educational system at a statewide and even nationwide level. Mr. Cavnar was awarded a small additional pay supplement after earning North Carolina Teacher of the Year in 2016 and now engages in significant work 12 months of the year in various advisory positions and roles, including but not limited to service on the Governor's Teacher's Advisory Council and significant extra duties and responsibilities per North Carolina State Board Policies and local and statewide initiatives.

50. In January of 2022, as soon as the new Gaston County Schools payroll system was changed over to a new system, Mr. Cavnar was not timely paid the proper compensation in his monthly paycheck. He was not paid approximately Three Hundred Thirty-Four Dollars (\$334) which he had always received monthly without any disruption. He did not realize it at the time but hundreds of other teachers faced the very same issues with improper payroll compensation amounts taken by the government.

51. Upon information and belief, this amount was excluded from his salary because it accounted for separate duties and responsibilities. Many employees throughout the county have these very same types of additional compensation line items for various duties, roles, or responsibilities apart from their standard base compensation or local supplemental compensation – from teachers that serve as coaches, to teacher assistants that drive a bus, or simply employees that work different roles or rates or receive additional reimbursements, bonuses, or amounts of compensation like Mr. Cavnar. Upon information and belief, Mr. Cavnar's situation was not unique but instead the very same thing happened to educators across Gaston County Schools that were not timely paid for additional compensation amounts beyond their base or local supplements.

52. Unfortunately, this was only the beginning to Mr. Cavnar's marathon of ongoing failures to timely provide him proper compensation. He promptly informed administration of the problem, yet it continued without resolution for months. He was again not timely paid his monthly supplement. He communicated with HR, his school's financial secretary, filled out Oracle help forms...he essentially gained an additional part time job now attempting to obtain his proper, legally owed compensation taken by the government.

53. While Mr. Cavnar (like most teachers) was very understanding of good faith errors that could come with a new system, he began to lose patience when he received no responses and no assistance in response to his requests. The schools had wrongfully taken his property, and he was caught in a county wide blanket of bureaucratic government indifference to the unconstitutional taking of his property. He often

could not get a response and no one seemed to care; most troublingly, the very same thing continued to happen – month after month, despite his express, repeated communications to the schools to stop taking his wages.

54. In February, he began to receive random, inexplicable amounts of compensation with confusing labels like Salary Prepayment - \$18.00 deduction from his paycheck; Statutory Retro Pay +\$432.00 in his March paycheck; and Local Supplement Teacher Retroactive -\$433.99 and Supplement – 12 mth Retroactive - \$334.32.

55. Like so many other employees, Mr. Cavnar now faced great difficulty to determine how much money he was overpaid, underpaid, or the amount of his proper compensation because the government had taken so much of his money and failed to pay his proper compensation for so many months. He repeatedly asked for explanations as to these amounts but never received any explanations. All he really wanted was for someone to sit down with him, go through his paychecks, and carefully and properly determine his proper amount of payroll compensation so it could be fixed.

56. In June, six months into the new payroll system and with full knowledge of the widespread failures, Gaston County Schools simply failed to pay Mr. Cavnar his salary for the entire month.

57. Upon information and belief, hundreds of other employees across the county were not timely paid their proper compensation each month for work performed since the beginning of the new payroll system, just like Mr. Cavnar.

58. Upon information and belief, the failure to pay school employees their proper compensation – sometimes for an entire month or more, like Mr. Cavnar, led to significant hardship, uncertainty, expenses, and costs. Employees living month to month had no choice but to incur penalties, overdraw accounts, withdraw from savings, and face substantial losses as a result of the taking of their compensation.
59. After significant efforts over weeks, Mr. Cavnar finally received his June compensation – nearly one month later along with his July base salary. He believes other individuals, however, were not as fortunate and are still missing their compensation for work performed.
60. In July of 2022, the problems continued and he was now paid a Supplement 12 month that appeared to be an approximately two-hundred dollar overpayment. Mr. Cavnar is no longer certain regarding underpayments or overpayments and now faces substantial uncertainty each month as to whether or not he has been overpaid (and subject to repayment of debts owed to the school system) for unknown amounts of money over unknown amounts of time.
61. Problems continued into the Fall of 2022 for Mr. Cavnar, with the same approximately two hundred dollar estimated potential overpayment and additional confusing failures. On August 26, 2022, Mr. Cavnar received the same incorrect approximate overpayment but also received a Local Supplement Prepayment Retroactive -\$84.11 deduction and an additional taking of his monies totaling \$1,572.98 that Gaston County Schools labeled Salary Prepayment Retroactive.
62. Upon information and belief, hundreds of school employees face the same improper takings of monies through monthly underpayments, inexplicable overpayments,

and now confusion and uncertainty with potential future repayments and collections efforts with uncertain year end 2022 tax reporting complications. Mr. Cavnar's annual tax forms, like employees the county, are improper, inaccurate, and false with problems like mismatched federal and state earnings amounts or loans forced to be repaid reported as taxable income.

63. Annual Forms W2 are now inaccurate and improper based on wrongful compensation and involuntary, forced 'loans' that aren't treated as true loans, and employees across the county face uncertainty regarding how to remedy and rectify their improper annual year of compensation. To date, no individualized audit or accounting expertise to formally reconcile each school employee's payroll history has been undertaken in order to accurately and completely rectify the errors.

LEGAL CLAIMS

COUNT I

NEGLIGENCE

(Negligence in Payroll System Implementation, Administration, and Rectification of Known Failures)

64. The numbered allegations outside this Count are restated and incorporated herein by reference.
65. Defendant owed Plaintiffs a duty to act reasonably in the handling of Plaintiffs' property in the form of compensation, deductions, and other similar compensation related benefits; in the administration of its business systems, including the payroll compensation system; and in the rectification of known, ongoing problems and failures.
66. Defendant breached that duty by: implementing a new payroll system in Gaston County against the warnings and recommendations of government officials; grossly failing to adequately respond to, communicate with, and rectify problems with each employee's compensation once expressly notified of the wrongful conduct; and grossly failing to hire/retain/contract adequate payroll related personnel, such as a professional auditor to accurately account for prior compensation balances; and failing to stop the untimely and wrongful compensation practices in many instances after being expressly and repeatedly informed of the wrongful conduct, regardless of whether or not Plaintiffs were ultimately paid the correct sums owed to them pursuant to their potential contracts.

67. Upon information and belief, Defendant has waived any claims to sovereign immunity up to and including the amount of insurance procured, by Policy, pursuant to the Gaston County Schools Board Policy and recommendations of the Superintendent.
68. Upon information and belief, Defendant acted in a grossly reckless, willful, or wanton manner in its ongoing, repeated, unlawful and wrongful actions.
69. As a proximate and but for result caused by this breach, the Plaintiffs lost their paid compensation and other benefits with the Board, incurred additional losses, costs, fees, and uncertainty and hardship, as well as suffered emotional distress and other pecuniary and non-pecuniary damages entitling them to damages in excess of \$25,000.

COUNT II

TAKING OF PROPERTY WITHOUT JUST COMPENSATION IN VIOLATION OF ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION

70. The numbered allegations outside this Count are restated and incorporated herein by reference.
71. Article I, Section 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be ... in any manner deprived of his ... liberty[] or property, but by the law of the land.” This clause protects against the taking of property by the State without just compensation. *See Long v. City of Charlotte*, 306 N.C. 187, 196, 293 S.E.2d 101, 107-08 (1982) (“ [T]he fundamental right to just compensation ... is considered in North Carolina as an integral part of ‘the law of

the land' within the meaning of Article I, Section 19 of [North Carolina's] State Constitution.”).

72. Plaintiffs are employed through various forms of at-will or classified contracts, term contracts, or ongoing career status contracts between teachers and the local boards of education. These contracts, however, do not provide any requirements or terms regarding the *timeliness* of each individual's compensation; rather, these generalized documents incorporate and defer to the state and local compensation schedules and any local supplements to be paid in the *sum or amount* mandated by law without any regard to the *timeliness* of the payments. Any common law claims under contracts are inadequate to address the persistent, repeated, and ongoing *untimeliness* of proper compensation payments.

73. The North Carolina legislature, however, has expressed a clear policy for teachers to be “paid promptly when their salaries are due” provided the legal requirements for employment service have been met. N.C. Gen. Stat. § 115C-302.1; *see also* N.C. Gen. Stat. § 115C-316 (“[s]chool officials and other employees shall be paid promptly when their salaries are due”). Unlike other sections of §115C that provide a clear means of recourse and cause of action to protest and appeal other policy violations by the school system, §115C-302.1 contains no such right of appeal or cause of action arising from untimely compensation payments. *See, e.g.*, §115C-325.6 (“hearing before the board” provided in alleged violations of grounds for dismissal).

74. Plaintiffs repeatedly attempted to utilize Defendant's internal procedures to obtain relief from the unlawful and untimely takings of their property. Upon information

and belief, hundreds of other employees, along with Plaintiffs, repeatedly and expressly informed Defendant of payroll compensation failures. Employees wrote to seek recourse; called to seek recourse; and one employee even went in person to the central office (despite being warned not to do so) and refused to leave the premises until she was timely paid. Plaintiffs often received no response whatsoever to their complaints made to the administration at the central office and went months without any response or resolution to their problem. Any type of further, additional internal processes or procedures by the Plaintiffs, amongst the hundreds of other ongoing unlawful and untimely payroll failures, would have been entirely futile.

75. Once Plaintiffs performed the work necessary to earn their wages and satisfy all other legal requirements to be compensated, they have vested rights in their earned wages due and owing for work already performed. These vested rights are protected against uncompensated takings for any period of time by the Law of the Land Clause of the North Carolina Constitution. *See Bailey v. State*, 348 N.C. 130, 154, 500 S.E.2d 54, 68 (1998) (“[I]f the Legislature had vested an individual with the property in question, [the Law of the Land Clause] would restrain them from depriving him of such right.”).

76. Defendant’s failures to timely pay compensation, whether by direct failures to pay earned wages for varying time periods; failures to timely pay wages through excessive or improper deductions; failures to timely pay wages through improper withholdings and/or remissions to third parties; (all even if ultimately rectified or corrected in amounts such as to comply with sums in any contracts or state

compensation schedules), constituted takings of the property of those school employees without just compensation, in violation of Article I, Section 19 of the North Carolina Constitution.

COUNT III

INFRINGEMENT OF THE INALIENABLE RIGHT TO EARN A LIVING AND ENJOY THE FRUITS OF THEIR OWN LABOR IN VIOLATION OF ARTICLE I, SECTIONS 1 AND 19 OF THE NORTH CAROLINA CONSTITUTION

77. The numbered allegations outside this Count are restated and incorporated herein by reference.

78. Article I, § 1 of the North Carolina Constitution provides that “all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.” *N.C. Const. art. 1, §1.*

79. The drafters of the North Carolina Constitution believed that, in the wake of the widespread performance of work without compensation during the abhorrent and recently abolished practice of slavery, no man could truly be free in the State of North Carolina without the inalienable right, guaranteed by the Constitution, to both the liberty to work *and* to reap the benefits of what he sowed through that work. North Carolinians have long valued and recognized the dignity of work and compensation for work performed, particularly in the care, upbringing, and education of the next generation.

80. Plaintiffs are employed through various forms of at-will or classified contracts, term contracts, or ongoing career status contracts between teachers and the local boards of education. These contracts, however, do not provide any requirements

or terms regarding the *timeliness* of each individual's compensation; rather, these generalized documents incorporate and defer to the state and local compensation schedules and any local supplements to be paid in the *sum or amount* mandated by law without any regarding to the timeliness of the payments. Any common law claims under contracts are inadequate to address the persistent, repeated, and ongoing *timeliness* of proper compensation payments.

81. The North Carolina legislature, however, has expressed a clear policy for teachers to be "paid promptly when their salaries are due" provided the legal requirements for employment service have been met. N.C. Gen. Stat. § 115C-302.1; *see also* N.C. Gen. Stat. § 115C-316 ("[s]chool officials and other employees shall be paid promptly when their salaries are due"). Unlike other sections of §115C that provide a clear means of recourse and cause of action to protest and appeal other policy violations by the school system, §115C-302.1 contains no such right of appeal or cause of action arising from untimely compensation payments. *See, e.g.,* §115C-325.6 ("hearing before the board" provided in alleged violations of grounds for dismissal).

82. Plaintiffs repeatedly attempted to utilize Defendant's internal procedures to obtain relief from the unlawful and untimely takings of their property. Upon information and belief, hundreds of other employees, along with Plaintiffs, repeatedly and expressly informed Defendant of payroll compensation failures. Employees wrote to seek recourse; called to seek recourse; and one employee even went in person to the central office (despite being warned not to do so) and refused to leave the premises until she was timely paid. Plaintiffs often received no response

whatsoever to their complaints made to the administration at the central office and went months without any response or resolution to their problem. Any type of further, additional internal processes or procedures by the Plaintiffs, amongst the hundreds of other ongoing unlawful and untimely payroll failures, would have been entirely futile.

83. Timely compensation benefits to school employees, like Plaintiffs, constitutes the *fruits* of their labor for work performed pursuant to Article I, § 1 of the North Carolina Constitution. Plaintiffs' reliable, predictable compensation in exchange for work performed, along with proper withholdings or deductions from their compensation, constitutes the fruit of employees' labor for work performed, and Plaintiffs are guaranteed the right to these benefits free from unlawful governmental intrusion.
84. Defendant's failures to timely pay compensation, whether by direct failures to pay earned wages for varying time periods; failures to timely pay wages through excessive or improper deductions; failures to timely pay wages through improper withholdings and/or remissions to third parties; (all even if ultimately rectified or corrected in amounts such as to comply with sums in any contracts or state compensation schedules), constituted infringements upon Plaintiffs' rights to enjoy the fruits of their labor, in violation of Article I, Section 1 of the North Carolina Constitution.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, Plaintiffs respectfully request that this Court enter one or more orders granting the following relief:

- I. A preliminary injunction and permanent injunction enjoining and restraining Defendant from continuing to violate the rights of Plaintiffs, including but not limited to:
 - i. Failing to *timely* pay proper earned compensation amounts required by law to each individual Gaston County Schools employee on each regular payroll cycle period following the period during which all work is performed;
 - ii. Failing to respond to Gaston County Schools employees' express written notifications of improper compensation within a reasonable time period in instances where payroll errors occur, not to exceed five (5) business days and to rectify and resolve such improper compensation within a reasonable time period, not to exceed ten (10) business days;
 - iii. Attempting to recoup or collect prior alleged overpayments of compensation without an independent third-party auditor's written findings and determination of overpayment amounts due and owing offset by any underpayments or additional costs, expenses, or losses caused by the payroll failures, or failing to compensate and repay individuals with such losses without any overpayment, as verified by the independent third party auditor;

- II. The entry of a judgment for lost wages, benefits, backpay, incidental costs and expenses, and all other monetary and financial and economic damages incurred, and a judgment for damages of emotional distress and other damages to be proven at a trial by jury against Defendant for all claims;
- III. The entry of a judgment for all costs and attorney's fees against Defendant for all claims;
- IV. The entry of a judgment declaring Defendant's actions unconstitutional and unlawful; and

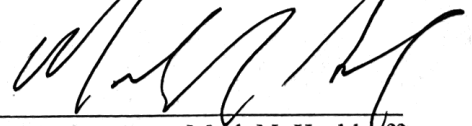
Any and all such other relief as this Court may deem just and proper.

Plaintiffs demand a jury as to all claims.

Respectfully submitted, this the 6th day of March, 2023.

Counsel for Plaintiffs

The Law Office of Mark N. Kerkhoff, PLLC



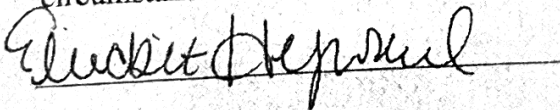
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NORTH CAROLINA
GASTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CVS

NORTH CAROLINA ASSOCIATION OF EDUCATORS, INC., ELISABETH HAYWOOD, and BOBBIE CAVNAR,	VERIFIED COMPLAINT AND REQUEST FOR INJUNCTION
<i>Plaintiffs,</i>	
vs.	
GASTON COUNTY BOARD OF EDUCATION,	
<i>Defendant.</i>	

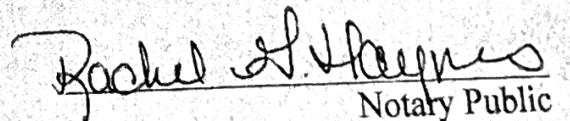
NOW COMES PLAINTIFF, being first duly sworn, deposes and says that he or she is one of the Plaintiffs in the foregoing action and has the authority to make this verification; that he or she has read the foregoing VERIFIED COMPLAINT AND REQUEST FOR INJUNCTION and knows its contents and that the same is true of his or her own knowledge as to those matters related individually to such PLAINTIFF, except as to those matters stated related to other PLAINTIFFS or matters stated upon information and belief, and as to those matters, he or she believes them to be true based upon the documents, facts, statements, and circumstances within his or her personal knowledge.



PLAINTIFF

Sworn and Subscribed Before Me,

This the 28th day of February, 2023.



Notary Public

Rachel G. Haynes
Notary Public, State of North Carolina
Lincoln County

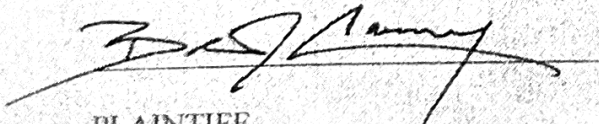
My Commission Expires: 3-1-2025

NORTH CAROLINA
GASTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CVS

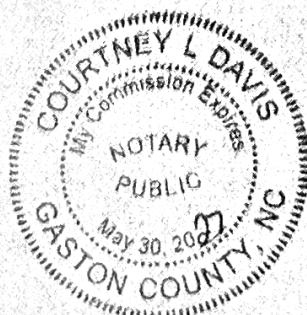
<p>NORTH CAROLINA ASSOCIATION OF EDUCATORS, INC., ELISABETH HAYWOOD, and BOBBIE CAVNAR.</p> <p><i>Plaintiffs,</i></p> <p>vs.</p> <p>GASTON COUNTY BOARD OF EDUCATION.</p> <p><i>Defendant.</i></p>	<p>VERIFIED COMPLAINT AND REQUEST FOR INJUNCTION</p>
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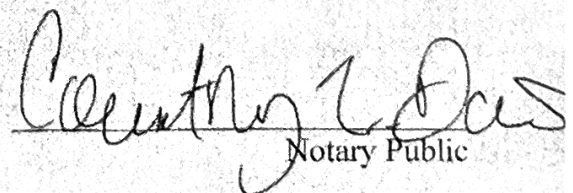
NOW COMES PLAINTIFF, being first duly sworn, deposes and says that he or she is one of the Plaintiffs in the foregoing action and has the authority to make this verification; that he or she has read the foregoing VERIFIED COMPLAINT AND REQUEST FOR INJUNCTION and knows its contents and that the same is true of his or her own knowledge as to those matters related individually to such PLAINTIFF, except as to those matters stated related to other PLAINTIFFS or matters stated upon information and belief, and as to those matters, he or she believes them to be true based upon the documents, facts, statements, and circumstances within his or her personal knowledge.


PLAINTIFF

Sworn and Subscribed Before Me,

This the 27 day of February, 2023.




Notary Public

My Commission Expires: May 30, 2027